

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, July 10, 2003, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Fraas, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: Camire, Conneely, Looney, Patenaude

General Public Present: Approximately 16

PUBLIC COMMENT

John Kyle asked whether public comments would be taken at the Work Session. He was told yes. He then turned in a card.

Vincent Schmidt made a presentation from a new group developed to discuss losing the view in the Hayward Hills, "Save the Views in Hayward." He noted that trees are the most prevalent view blocker. www.haywardview.org. Losing the view in about 5 years. The values of houses have been diminished as a result. He suggested there were other ways of dealing with the problem rather than ordinance. Short term. Selecting good and bad neighbors. He showed slides of good neighbors and said they had created an award called "Do the Right Thing" in order to reward those neighbors who are aware of their neighbors views. He looked at the mess of view encroachment.

AGENDA

Chairperson Bogue called for the election of officers. He nominated Commissioner Zermeno as Chair; Commissioner Sacks as Vice-Chair; and Commissioner Thnay as Secretary. This was seconded by Commissioner Halliday, and unanimously approved. Commissioner Zermeno then took the Chairperson seat.

1. Variance Application No. PL-2003-0234 - George Dimic (Applicant/Owner) - To Retain a Fence Exceeding 4 Feet in Height within the Front Yard - The Property is Located at 2608 Home Avenue
2. Appeal of Planning Director's Denial of Variance No. PL-2003-0276 - Richard Camponuevo (Appellant/Applicant)/ Manual Garcia (Owner) - To Allow a 3' 6" Side Yard Setback Where a 5' Side Yard Setback is Required and a Garage Width of 10' Where 11' is Required - The Property is Located at 23681 Ronald Lane

3. Variance Application No. PL-2003-0219 – Roberto Lomeli (Applicant/Owner) – To Retain a 350 Square-Foot Carport Addition that Would Exceed 50 Percent of the Residence Area – The Property is Located at 956 Folsom Avenue
4. Findings and Conditions of Approval for Site Plan Review No. PL-2003-0012 – James Jensen (Applicant/Owner) – Request to Construct a Single-Family Dwelling with a Two-Car Garage that Exceeds 50 Percent of the Frontage of the Dwelling – The Property is Located at 24431 Second Street

PUBLIC HEARINGS

1. Variance Application No. PL-2003-0234 – George Dimic (Applicant/Owner) – To Retain a Fence Exceeding 4 Feet in Height within the Front Yard – The Property is Located at 2608 Home Avenue

Associate Planner Camire made the staff presentation. She noted the location of the property as well as the location of the fence and commented that the applicant did apply for an encroachment permit to replace a planter on the property. A City inspector noted the work exceeded the scope of the approved permit and issued a stop work permit. She showed several views of the house and the fence at this stage. Staff cannot support the variance since it is contrary to the Highlands Neighborhood Plan. The Old Highland Neighbor Association has written a letter of support but has added that they do not want this application to set precedence. Staff believes it would. There have been letters of both support and opposition. One stressed pedestrian safety. Staff recommends denial of the variance.

Commissioner Halliday asked a question regarding the request of not setting precedence. It seems as though we cannot allow that as a request.

Principal Planner Patenaude responded that once precedence is set, that's the nature of the approval. Both staff and the Commission would find it difficult to deny others.

Commissioner Halliday then asked about the design and whether cutting the fence down to 4-foot would it be more acceptable.

Associate Planner Camire explained that even at 4-feet, it doesn't meet the design guidelines in the Neighborhood Plan.

Chairperson Zermeno asked whether there is any plan for a sidewalk.

Associate Planner Camire said there are none.

The public hearing opened at 7:50 p.m.

Applicant George Dimic said he replaced a fence on his own without getting a permit. He described this new fence saying the columns are 4-foot 6-inches to 6-feet, and the wrought iron in between the columns is less than 4-feet high. He noted that his house is on a fairly steep grade. He added that in discussing the fence with his neighbors, out of 28, 25 support the

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variance request to allow the fence to remain. Two wanted to think about it, one objected. Many felt it was an improvement over the old fence. The Old Highlands Homeowner's Association supported it 4:1. He commented that the City examined the safety aspect and found no issue. He showed photos of many houses in the neighborhood with columns and wrought iron fences, adding that in the driveway preceding his there are columns. He said it was not his intention to disrupt the neighborhood. He asked the Commission to grant the variance.

Commissioner McKillop said she was curious about the intent of building this type of fence.

Mr. Dimic said he simply wanted to replace the previous fence. He said he has lived there 22 years and has always dreaded drivers who might hit the curb, although he did admit that in the number of years he has lived there, there have been no incidents. He felt the concrete might stop cars from entering his yard. He admitted that a fence is no obstacle for deer.

Commissioner Thnay asked him whether he was a registered civil engineer, and as such why he would not be aware of needing a permit for this size fence.

Mr. Dimic said he was a mechanical engineer. He noted that he was aware of other cities, which do not have requirements. He was not aware of Hayward's. He said he did not want to have to rebuild the fence again in his lifetime.

Commissioner Fraas asked him whether he is a member of the Old Highlands Homeowners Association (OHHI).

Mr. Dimic said he was but had begun building the fence prior to his involvement with the board.

Bruce Barrett, a neighbor, brought photographs of the fence from a driver's eye view. He said he had no quarrel with Mr. Dimic. His issue is with safety and whether allowing the fence to remain is safe. He noted little visibility between the columns, adding that having wrought iron would be an additional obstruction. The fence blocks the driver's view. There are no sidewalks; so any one walking across the road would not be seen. He sees safety as a problem with animals and pedestrians. He added that an application for a permit might have solved the problem.

Commissioner Thnay asked about the view with the old wooden fence.

Mr. Barrett admitted that the old fence was similar with the lack of view. He commented on the "monster tree" on the corner as well.

Commissioner Halliday then asked him for suggestions to make it safer, and whether people drive too fast in this area.

Mr. Barrett responded that about 10 mph is safe, whereas 15 or 18 mph might be too fast. Because the fence is located on a curve and not an intersection, drivers do not worry about other cars. Drivers have 20-25 feet to see pedestrians. At 15 mph you cannot stop in time.

Commissioner Halliday then asked how this relates to the fence on the property.

Mr. Barrett responded that if the property were treated as a corner property at an intersection, note would be made of the sight line.

Commissioner Halliday then asked his opinion of the design of the fence.

Mr. Barrett said it is a nice design.

Steve Anderson, neighbor, said he safely walks the street everyday. He felt that this fence is different and better than the one before and that tearing it down would be punishment. He supported granting the variance.

Margaret Warheast noted that Home Avenue is a one-way street used mostly by those people who live on Home or Hillcrest. She described the new fence as an improvement. It protects the rural aspect of the neighborhood. As a member of OHI, she would hesitate to prevent people from improving their property. Those fences, which are falling apart, are the real problem. She stated that Mr. Dimic is improving property values with this, and asked the Commission to grant him his variance.

Lane Warheast said that Mr. Dimic is a great neighbor. He felt that since the old fence was bigger, this new one is actually improving the neighborhood. This is something that should be granted.

Lorena Epperson said she likes the fence and thinks it is beautiful but commented that a person can't see through it. In a truck you can see through it, but not in a car. She said she was concerned with pedestrians and safety. Teenagers like to go the speed limit. She said you cannot see around the fence. It does not belong on a corner.

John Kyle said many immigrants come from areas with civil unrest. As a result they bring with them the philosophy of erecting walls to protect the compounds of their homes. He described the "siege mentality" in Oakland, adding that a lot of people will do the same thing and not usual for them to proceed without a permit.

Doug Sprague, President of OHHA, said the Board would like to stick pretty close to the decision described in their letter, as well as the staff recommendation denying the request. The area is open space, and rural. The Board agrees with that, however, they are not sure it applies in the Dimic's case. He said they value the style and look which is more open and graceful than just concrete. He commented on a survey of 18 neighbors. All but 2 thought it was okay although maybe out of character, the height was not an issue. He said the Board's decision is to support the application with 3 contingencies. The first is for the City to address the traffic safety issue at the Dimic curve. The Board asked for the City to provide a "No Parking" sign at this curve as well as a "Blind Curve 5 mph" sign, and periodic traffic enforcement. The second is that approval of this project not be treated as a precedent for higher fences in the

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neighborhood; the third is for the City to not accept the curb and street repairs installed by Mr. Dimic as a final solution for curb and street drainage.

Commissioner Bogue suggested that the fence style might be appropriate at this location. He asked Mr. Sprague whether the Board would approve of every house having this style of fence.

Mr. Sprague responded that they believe it is up to the house owners as to the type and style of fencing. He added that they would hope for variety.

Commissioner Bogue then continued asking whether they would approve of all the fencing designed with columns and wrought iron.

Mr. Sprague said he could not speak for the Board on that question, but personally, he had a belief in a more eclectic approach. He admitted it is an independent neighborhood.

Commissioner Halliday paid Mr. Sprague compliments on the literary quality of the letter. She then asked whether, if there were no guarantee of granting these conditions, would the Board then not support the application. She commented that the City and the Commission have an obligation to be fair and not grant special consideration to homeowners.

Mr. Sprague maintained that the Board is supporting the variance according to the conditions specified in their letter.

Bill Linder said he could not add much to what had been said, although he did agree that this fence is an improvement over the old fence, and believed it would not be a hazard. He commented that visibility with this fence is an improvement over what was there before.

The public hearing was closed at 8:30 p.m.

Principal Planner Patenaude reminded members that if the fence had been constructed to 4 feet of height it would not require a permit and the style would not be an issue. As it is, with the height of the masonry pilasters, they instill a hard edge to a neighborhood known for soft edges. He admitted that other properties in the area might have taller fences and that there are few variances in the area. He said the conditions of OHHA Board would put the burden on the City, rather than on Mr. Dimic. He agreed that the safety issue is not one that might apply in this case. Staff does not feel there are grounds to support the application.

Chairperson Zermeño commented that if the Commission approves this application, it would be precedent setting and place a burden on the City.

Commissioner Halliday commented that it looks as though some of the pilasters are 8 feet tall.

Associate Planner Camire responded that from the street level they are 7 feet but from inside the yard, yes they are 8 feet in height.

Commissioner Halliday then asked whether 4 feet from street side would be okay.

Commissioner Sacks moved, seconded by Commissioner Bogue, to support the staff recommendation to deny the variance. She commented on three key issues. One is that there is a large element of the essence of "leave us alone, let us have it our way," in the neighborhood. She noted that there are other people in the area who have bigger fences, which sounds as though those were built without permits. She said it would set a precedent for the Commission to approve this variance, adding that it is not the appearance of the fence nor is it a safety issue since those streets are unsafe anyway. As to the issue of the height, if this were approved, the Commission would be accepting 7 feet. She said they did not want to do that. Four foot is what is established. She noted that OHHA did not want it to be precedent setting and it would be.

Commissioner McKillop said as a former resident of this neighborhood, she appreciated the support the residents have shown. She added that the Old Highlands is a wonderful place to live. She commented that beauty is not the issue. She understands that the residents want to be left alone. She agreed that it is unfortunate that the Commission could not find a compelling reason to support the variance. She noted that she would love to see some variation in the compliance.

Commissioner Thnay said he had mixed feelings about the whole issue. It seems like the City of Hayward traffic engineers conclude safety is not the issue. Although the special circumstances do not seem overwhelming, not everything along the fence is 7 feet and there is a gradation of fence heights. Compared to the old fence and oleanders, the neighborhood supports this and it is positive, special circumstances should warrant the variance. He added that he did not think everyone would put up a similar fence. The wrought iron is an improvement, and since it is only 3 feet, that's a compromise.

Commissioner Halliday noted that both Commissioners Sacks and McKillop made good points. She added that she did not see safety as a concern either. She did, however, encourage OHHA to work with the City to make it safer to walk in that neighborhood. She also agreed that the variance cannot be supported. She commented that fences seem to be a big issue these days. When the fence is in the front yard, the rules should be followed. As an aside to Mr. Dimic Commissioner Halliday said she was sorry he did this without a permit, since it is a nice design but not legal. It does not seem out of character with the neighborhood. She said she would support the motion.

Commissioner Bogue stated his belief that this was precedent setting. As to the height of fence, although the wrought iron is only 3 feet, the maximum height is to be 4 feet. He said he could not support the variance and would support the motion.

The motion passed 6:1, with Commissioner Thnay voting "No."

2. Appeal of Planning Director's Denial of Variance No. PL-2003-0276 – Richard Camponuevo (Appellant/Applicant)/ Manual Garcia (Owner) – To Allow a 3' 6" Side Yard Setback Where a 5' Side Yard Setback is Required and a Garage Width of 10' Where 11' is Required – The Property is Located at 23681 Ronald Lane

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Principal Planner Patenaude explained that the property owner is applying to make an addition to his home. To add bedrooms onto a home, it has to have a two-car garage. The garage addition would push the garage into the back yard, as well as maintain the 3-foot 6-inch side yard setback. There is 10 feet between the garage and the house on the adjacent property. They would also like to change the appearance of the house from a flattop to a hip roof. Although the thirty-six inch setback is not typical in that neighborhood, there are two other examples of them on Ronald Lane. He explained that, in those cases, there is a seven-foot separation between the houses, rather than the 10-foot. However, staff has determined that findings to reduce the setback cannot be made. It is a standard lot and there is nothing unusual regarding the shape or topography. By not granting the variance, the appellant would have to look at other options to provide a two-car garage.

Commissioner Halliday asked when these houses were built, were they in the City of Hayward.

Principal Planner Patenaude said they seem not to be; as a result, they must have been originally approved by the County with the reduced setback.

Commissioner Fraas asked how other neighbors addressed this issue.

Principal Planner Patenaude explained that there might have been other opportunities to do a side-by-side garage. He added that some in the neighborhood have garage conversions.

Commissioner Sacks noted the staff comment on having trouble with findings for denial and asked how it would change the appearance of the home.

Principal Planner Patenaude explained that it would not since the garage would be tandem parking. It would retain the setback distance all the way back.

Commissioner McKillop asked about other homes in the neighborhood and what changes they might have made.

Principal Planner Patenaude said modifications of rooflines requests are common. He had not checked into the additional rooms.

Commissioner McKillop commented that it looked as though most of the homes are standard.

Chairperson Zermeno asked about the City requirement of 11-foot wide garages.

Principal Planner Patenaude said the City of Hayward does accept 10 feet for existing single-garages, which is an administrative variance.

The public hearing opened at 8:57 p.m.

Richard Camponuevo, the architect, said they started doing this addition, although it is not a 50 percent increase to the property, which is presently 1500 square feet. He said the addition would add 230 square feet. The applicant presently has a one-car garage and by allowing an extension of 7-feet, it would not interrupt the daylight or neighbors. He said they tried different variations to fit a side-by-side garage into the space but it was too expensive. He asked for the members to allow them to continue the garage into the back. He explained that he was speaking for the owner who does not speak English well.

Principal Planner Patenaude explained that there was no problem with addition itself. It would provide a nice roof and upgrade the house,

Commissioner Halliday asked whether there are windows further back on the neighboring house where the garage would be.

Principal Planner Patenaude said no there were none.

The public hearing was closed at 9:02 p.m.

Commissioner Halliday moved, seconded by Commissioner Sacks, to approved the variance. She also noted her appreciation of remodeling these older houses. She said she could not understand how staff could not make the findings for the variance since denying it would deprive the owner of the benefits of others in the area. These homes were built with these setbacks. She suggested a possible lot line adjustment in this area and had no problem granting the variance.

Commissioner McKillop agreed to support the motion. She said she liked the idea of bringing these small homes into the 21st century.

Principal Planner Patenaude explained that staff would need to bring back findings and conditions if you approve. He noted they might not be able to do it until September 11th, after the August recess.

Commissioner Halliday added to her motion to direct staff to bring back findings and conditions for approval. Commissioner Sacks agreed.

Commissioner Bogue expressed concern about allowing new construction within the side yard setback.

Principal Planner Patenaude said he believed it could be okay. They would add upgrading construction within the conditions of approval, if approved.

Commissioner Bogue said that it would not be fair as well as inappropriate to take someone else's land for spacing. He added that theoretically the next-door building could build out, so as a result he could not support the motion.

Commissioner Thnay explained his respect for staff, which is to uphold the letter of the law but noted that as a Commission their role is to see the shades of gray. He said he would trust that this could be worked out.

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Commissioner Halliday said in response to Commissioner Bogue that the setback with the existing garage was meeting the City requirement to expand the garage. She added that if the older neighborhoods deteriorate, it could create serious problems for our neighborhoods in the future.

Commissioner Bogue responded that this homeowner is not being deprived of anything other homeowners have received. He said he looked at the approved designs.

Chairperson Zermeno said he would support the motions since older neighborhoods need improvement.

The motion passed 5:1:1, with Commissioner Bogue voting No, and Commissioner Fraas abstaining.

3. Variance Application No. PL-2003-0219 – Roberto Lomeli (Applicant/Owner) – To Retain a 350 Square-Foot Carport Addition that Would Exceed 50 Percent of the Residence Area – The Property is Located at 956 Folsom Avenue

Associate Planner Camire described the property and asked for approval for the variance, with the findings and conditions.

The public hearing opened and closed at 9:15 p.m. with no speakers on the item.

Commissioner Sacks moved, seconded by Commissioner Halliday, to approve the staff recommendation. She then thanked staff for their work in this area.

The motion passed, 6:0:1, with Commissioner Fraas abstaining.

4. Findings and Conditions of Approval for Site Plan Review No. PL-2003-0012 – James Jensen (Applicant/Owner) – Request to Construct a Single-Family Dwelling with a Two-Car Garage that Exceeds 50 Percent of the Frontage of the Dwelling – The Property is Located at 24431 Second Street

Principal Planner Patenaude presented an overview of the previous presentation and the PC's finding that the garage was appropriate. He explained the conditions of approval most of which were discussed at the last meeting.

The public hearing was opened and closed at 9:19 p.m. with no public input on the item.

Commissioner Sacks moved, seconded by Commissioner Thnay, to accept the findings and conditions. She said she was happy to have found it appropriate to accept the design.

The motion passed, 6:0:1, with Commissioner Fraas abstaining.

ADDITIONAL MATTERS

5. Oral Report on Planning and Zoning Matters

There were no oral reports.

5. Commissioners' Announcements, Referrals

Commissioner Bogue discussed information he had received on two workshops to be held in Oakland. He had made copies to pass out to the other Commissioners.

Commissioner Sacks commented on an article she had passed along, from the San Jose Mercury News. She described it as a fun read.

Commissioner Halliday added her thanks to Commissioner Bogue for a great year as Chairperson.

APPROVAL OF MINUTES

- June 12, 2003 APPROVED
- June 19, 2003 APPROVED

ADJOURNMENT

Chairperson Zermeño adjourned the meeting to a worksession in room 2a at 9:25 p.m.

- A. study session to consider revisions to multiple-family residential design guidelines (continued from may 29, 2003).

APPROVED:

Christopher Thnay, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary